



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Earth Property Services, Inc.

File: B-231715.4

Date: August 29, 1989

DIGEST

A compelling reason exists for canceling an invitation for bids after opening where the agency determines that numerous changes have occurred in its requirements and that the specifications do not reflect the agency's actual needs.

DECISION

Earth Property Services, Inc. (EPSI), protests the cancellation of invitation for bids (IFB) No. F38601-88-B-0033, a total small business set-aside, issued by the Department of the Air Force for military family housing maintenance services at Shaw Air Force Base. EPSI contends that the agency lacked a compelling reason for cancellation after bid opening and that the cancellation was procedurally defective. The protester asserts that the original IFB should be reinstated and that it should receive the contract award based upon its low bid.

We deny the protest.

The IFB was originally issued on May 23, 1988. Bid opening was delayed as the result of protests of the specifications and eventually occurred on September 23, with contract performance scheduled to commence on October 1, 1988, for a 1-year base period, with four 1-year options. Award was delayed because EPSI, the apparent low bidder alleged a mistake in bid, and because two small business size status protests were filed with the Small Business Administration (SBA). As a result of this delay, the services in question were performed by government personnel commencing on October 1. During the period of performance by government employees, numerous changes in the requirements have occurred, including a reduction in the kind and number of base personnel who are eligible for house cleaning services and an increase in the scope of services to be performed to include security and boundary fence maintenance. In addition the turnaround time allowed for responding to

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certain requests has been substantially reduced, and certain new high efficiency furnaces and water heaters have been installed for which the contractor must provide specially certified mechanics in order to perform repairs required under the solicitation. Because of the scope of these changes, the contracting officer determined that the agency's family housing maintenance service needs had changed and that the IFB requirements required substantial revision. The contracting officer canceled the IFB effective April 13, 1989. After receiving notification of the agency's decision to cancel and resolicit, EPSI filed a timely protest with our Office.

While EPSI objects to the cancellation, the protester does not take issue with the agency position that there has been a change in its housing maintenance needs. The protester essentially maintains that the changed circumstances are not so substantial that they justify cancellation of the solicitation and that it should be awarded a contract based on the original government specifications. EPSI indicates that it is willing to meet the new requirements without any additional charge to the government.

Although a contracting officer has broad discretion to cancel an IFB, he must have a compelling reason to do so after bid opening because of the potential adverse impact on the competitive bidding system after bid prices have been exposed. See Federal Acquisition Regulation (FAR) § 14.404(a)(1) (FAC 84-5). As a general rule, the need to change the solicitation specifications after bid opening to accurately reflect the agency's needs constitutes such a compelling reason where an award under the solicitation would not serve the actual minimum needs of the agency or when other bidders would be prejudiced by such an award. Instrument and Controls Serv. Co., B-231934, Oct. 12, 1988, 88-2 CPD ¶ 345. We will not normally upset a contracting officer's determination as to an agency's needs or the best means of accommodating them, absent a clear showing that the decision was unreasonable.

Here, the changes in the agency's requirements provided the contracting officer with a reasonable basis to determine that cancellation was warranted, both to insure that the agency's minimum needs would be satisfied and to permit the bidders to compete on an equal basis under a solicitation which accurately specified these needs. With respect to the protester's contention that cancellation was improper because all of the proposed changes could have been negotiated after award, the general rule is that the integrity of the competitive bidding system precludes an agency from awarding a contract competed under certain

specifications with the intention of switching to materially different ones after award. See Flight Refueling, Inc., B-216709, May 13, 1985, 85-1 CPD ¶ 536. Since the contracting officer determined that the specifications will require substantial modification in order to reflect accurately the agency's current requirements, it would have been improper to award the contract under the original solicitation.

EPSI also claims that the contracting officer's cancellation of this IFB is in violation of the Air Force FAR Supplement § 33.102, which requires that decisions to deny protests be made at a level no lower than that at which the protest has been lodged. EPSI argues that before protesting to our Office it protested the proposed cancellation directly to the head of the contracting activity, but the contracting officer in effect denied the protest by canceling the solicitation. While it appears that the contracting officer acted in accordance with a valid delegation of authority, even if EPSI were correct this kind of procedural failure does not provide a basis to sustain a protest in any event. See Instrument and Controls Serv. Co., B-231934, supra.

Finally, EPSI asserts that acceptance of its bid will result in monetary savings to the government. However, the test for cancellation after bid opening is whether the procurement will satisfy the minimum needs of the agency and not whether the award will provide a cost savings to the government. See Magnolia Inn, B-216607, Mar. 1, 1985, 85-1 CPD ¶ 257.

The protest is denied.



James F. Hinchman
General Counsel